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8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE EASTERN DISTRICT OF CALIFORNIA**
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11 DeWAYNE G. THOMAS,

No. CIV S-04-0695-LKK-CMK

12 Plaintiff,

13 vs.

ORDER

14 JOSEPH A. BICK,

15 Defendant.
16 _____/

17 Plaintiff, a state prisoner proceeding pro se and in forma pauperis, brings this civil
18 rights action pursuant to 42 U.S.C. § 1983. Pending before the court are plaintiff's motion to
19 compel discovery responses (Doc. 16), and defendants' applications for amendment of the
20 scheduling order (Doc. 19 & 22). Plaintiff's motion in limine (Doc. 21) will be addressed, if
21 necessary, by separate order.

22 As to plaintiff's motion to compel, it appears that the heart of the dispute is
23 whether defendants were served with plaintiff's discovery request. Specifically, defendants state
24 in their opposition to plaintiff's motion that they never received plaintiff's discovery request until
25 they received the instant motion on June 9, 2005, to which a copy of the subject discovery request
26 was attached. Defendants indicate in their opposition that responses could be forthcoming within

1 45 days after receipt of the discovery requests. That 45-day period has now expired. The record
2 does not, however, reflect whether defendants served plaintiff with responses. In the absence of
3 evidence showing that, as of this date, defendants have completely failed to respond to plaintiff's
4 discovery requests, this motion is premature and will be denied without prejudice to renewal if
5 defendants have not yet responded. The current discovery cut-off date of July 22, 2005, is
6 extended for purposes of this discovery dispute only should a further motion to compel be
7 necessary. Any such motion must be filed within 30 days of the date of service of this order.
8 Otherwise, discovery is now closed.

9 As to defendants' applications for amendment of the court's scheduling order,
10 good cause has been shown to support the requests. The schedule for this litigation will,
11 therefore, be modified as follows:

| | | |
|----|-------------------------------------|--------------------------------------|
| 12 | Dispositive motion cut-off | – December 16, 2005 |
| 13 | Plaintiff's pre-trial statement due | – March 17, 2006 |
| 14 | Defendants' pre-trial statement due | – March 31, 2006 |
| | Pre-trial conference | – April 3, 2006 (on the papers only) |
| | Trial | – June 27, 2006 |

15 Except for the modified dates set forth above, all other aspects of the court's March 28, 2005,
16 scheduling order remain in effect.

17 Accordingly, IT IS HEREBY ORDERED that:

- 18 1. Plaintiff's motion to compel is denied without prejudice;
19 2. Defendants' requests to modify the scheduling order is granted as set forth
20 above.

21 DATED: October 12, 2005.

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23 
24 **CRAIG M. KELLISON**
25 UNITED STATES MAGISTRATE JUDGE
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